

LYNDAH WALLIN)	
Claimant)	
VS.)	
)	
HILLTOP NURSING HOME)	Docket No. 196,978
Respondent)	
AND)	
)	
INSURANCE COMPANY OF NORTH AMERICA)	
Insurance Carrier)	

After reviewing the record and considering the arguments of the parties, the Appeals Board concludes the Order of the Administrative Law Judge should be affirmed.

The record includes the testimony of the claimant taken at the preliminary hearing of May 1, 1996, exhibits offered and introduced at that hearing and an affidavit by claimant's supervisor, Martha A. Wells. Claimant testified she injured her low back while lifting a patient from a commode to a wheel chair. Claimant was not certain of the date of the injury but believed it occurred on June 10, 1994. Claimant also testified that she notified her supervisor, Marty Wells, of the accident. According to claimant, Marty Wells told her to take it up with the head nurse and fill out a report if the problem continued. Claimant testified that she notified the head nurse that night. Claimant and the head nurse could not find the report forms so claimant put a note on the door of the Director of Nursing.

Claimant worked the next two days and then went to Dr. J. Rob Hutchinson, her own physician, on June 14, 1994. Dr. Hutchinson released her to limited duty with minimal bending until June 20, 1994. Dr. Hutchinson's records were reviewed by Dr. Arthur B. Jenny. Dr. Jenny states in his letter of July 26, 1995 that he reviewed Dr. Hutchinson's records and that Dr. Hutchinson examined claimant for low back pain which was "attributed to lifting on patients." Dr. Jenny opines that claimant's low back pain and radiculopathy were related to her lifting patients in June 1994.

Respondent introduced the affidavit of Martha A. Wells. Ms. Wells states that claimant told her that claimant's low back problem was not work related, and that claimant had problems with her back in the past. Claimant acknowledged in her preliminary hearing testimony that she has had problems with her low back since a work-related injury in 1991.

With this conflicting testimony the Administrative Law Judge chose to believe claimant's version of the events. He had the opportunity to observe her testify and assess her credibility. For that reason the Appeals Board finds and concludes that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated May 10, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Timothy E. Power, Overland Park, KS
Michael W. Downing, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director